
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NO. 7:01-CV-0247-CR

FARYION EDWARD WARDRIP,

Plaintiff/Appellee,

VS.

RICK THALER, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,

Defendant/Appellant.

MOTION FOR EVIDENTIARY HEARING

TO THE HONORABLE PRESIDING JUDGE:

NOW COMES FARYION EDWARD WARDRIP, Applicant, and files this Motion for Evidentiary Hearing and would show the Court the following:

I.

Defendant Wardrip formally requests an evidentiary hearing on issues raised in his writ and requests the opportunity to present evidence in support of his claims.

II.

On June 9, 2011, the Fifth Court of Appeals heard oral argument in this case. The Court of Appeals was particularly interested in the application of *Cullen v. Pinholster* to this case and required both sides to present additional briefing on the issues. The bulk of oral argument centered on *Cullen v. Pinholster's* application and effect on this case. Wardrip requested a remand to permit Judge Stickney to provide appropriate clarification for the basis of his initial Findings and Recommendations, in light of *Cullen*.

Wardrip would respectfully request the opportunity for a hearing on this same issue to present this Court with evidence and argument as to why *Cullen v. Pinholster* does not disturb this Court's finding of constitutionally ineffective assistance of counsel and recommended habeas relief. If the Court is not inclined to provide the parties a hearing, Wardrip alternatively requests the opportunity to present written briefs on the potential application of *Cullen v. Pinholster*. Due to the significant stakes in this matter, Wardrip prays that this Court will permit additional argument and/or briefing on his behalf.

Finally, because two days of evidentiary hearings were conducted by the Honorable Magistrate Judge Paul Stickney, Wardrip respectfully requests that this Court return the matter back to Judge Stickney as he is the only individual that can address the true basis of his original Findings and Recommendations and whether such findings were based on items that transcend the state record. While the district Court conducted *de novo* review of Judge Stickney's findings, the District Court is not in a position to know with clarity the full basis of Judge Stickney's recommendation.

Accordingly, Wardrip respectfully requests that the case be returned to Judge Stickney for further hearing and/or briefing on the applicability of *Cullen v. Pinholster* to this Court's decision.

FOR THE ABOVE REASONS, Applicant Carpenter respectfully requests that this Court grant this motion and that this Court set an evidentiary hearing on Applicant's application for a writ of habeas corpus.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Motion for Evidentiary Hearing was served on the 15th day of June 2011, on Katherine D. Hayes, and Georgette Patrice Oden, Office of the Attorney General, by the e-mail system of the United States District Court ECFS .



BRUCE ANTON